

#### § 1004.4

#### 10 CFR Ch. X (1–15 Edition)

(i) Do not affect or alter contractors' obligations to provide to DOE upon request any records that DOE owns under contract, or DOE's rights under contract to obtain any contractor records and to determine their disposition, including public dissemination; and

(ii) Will be applied by DOE to maximize public disclosure of records that pertain to concerns about the environment, public health or safety, or employee grievances.

(4) For purposes of §1004.3(e)(2), "technical data and information having commercial value" means technical data and related commercial or financial information which is generated or acquired by a contractor and possessed by that contractor, and whose disclosure the contractor certifies to DOE would cause competitive harm to the commercial value or use of the information or data.

[53 FR 15661, May 3, 1988, as amended at 59 FR 63884, Dec. 12, 1994; 79 FR 22858, Apr. 25, 2014]

##### § 1004.4 Elements of a request.

(a) *Addressed to the FOIA Officer.* A request for a record of the DOE which is not available in a public reading facility, as described in §1004.3, shall be: Addressed to the Headquarters or appropriate field FOIA Officer at the DOE at a location listed in §1004.2(h) of this part, and both the envelope and the letter shall be clearly marked "Freedom of Information Act Request;" or submitted electronically on the Headquarters or appropriate field FOIA Web sites. Except as provided in §1004.4(e), a request will be considered to be received by the DOE for purposes of 5 U.S.C. 552(a)(6) and the 20-day response period will start upon actual receipt by the appropriate FOIA Officer, or not later than 10 days after receipt by a designated FOIA Officer at any location in §1004.2(h). Requests delivered after regular business hours of the FOIA Officer are considered received on the next regular business day.

(b) *Request must be in writing and for reasonably described records.* A request for access to records must be submitted in writing and must reasonably describe the records requested to enable DOE personnel to locate them with a reasonable amount of effort. Where

possible, specific information regarding dates, titles, file designations, and other information which may help identify the records should be supplied by the requester, including the names and titles of any DOE officers or employees who have been contacted regarding the request prior to the submission of a written request. If the request relates to a matter in pending litigation, the court and its location should be identified to aid in locating the documents. If the records are known to be in a particular office of the DOE, the request should identify that office.

(c) *Categorical requests.* (1) Must meet reasonably described records requirement. A request for all records falling within a reasonably specific and well-defined category shall be regarded as conforming to the statutory requirement that records be reasonably described if DOE personnel can reasonably determine which particular records are sought in the request. The request must enable the DOE to identify and locate the records sought by a process that is not unreasonably burdensome or disruptive of DOE operations. The FOIA Officer may take into consideration problems of search which are associated with the files of an individual office within the Department and determine that a request is not one for reasonably described documents as it pertains to that office.

(2) *Assistance in reformulating a non-conforming request.* If a request does not reasonably describe the records sought, as specified in paragraph (c)(1) of this section, the DOE response will specify the reasons why the request failed to meet the requirements of paragraph (c)(1) of this section and will invite the requester to confer with knowledgeable DOE personnel in an attempt to restate the request or reduce the request to manageable proportions by reformulation or by agreeing on an orderly procedure for the production of the records. If DOE responds that additional information is needed from the requester to render records reasonably described, any reformulated request submitted by the requester will be treated as an initial request for purposes of calculating the time for DOE response.

## Department of Energy

## § 1004.5

(d) *Nonexistent records.* (1) 5 U.S.C. 552 does not require the compilation or creation of a record for the purpose of satisfying a request for records.

(2) 5 U.S.C. 552 does not require the DOE to honor a request for a record not yet in existence, even where such a document may be expected to come into existence at a later time.

(3) If a requested record is known to have been destroyed or otherwise disposed of, or if no such record is known to exist, the requester will be so notified.

(e) *Assurance of willingness to pay fees.* A request shall include (1) an assurance to pay whatever fees will be assessed in accordance with §1004.9, (2) an assurance to pay those fees not exceeding some specified dollar amount, or (3) a request for a waiver or reduction of fees. No request will be deemed to have been received until the DOE has received some valid assurance of willingness to bear fees anticipated to be associated with the processing of the request or a specific request of a waiver or reduction of fees.

(f) *Requests for records or information of other agencies.* Some of the records in the files of the DOE have been obtained from other Federal agencies or contain information obtained from other Federal agencies.

(1) Where a document originated in another Federal agency, the Authorizing Official will refer the request to the originating agency and so inform the requester, unless the originator agrees to direct release by DOE.

(2) Requests for DOE records containing information received from another agency, or records prepared jointly by DOE and other agencies, will be treated as requests for DOE records except that the Authorizing Official will coordinate with the appropriate official of the other agency. The notice of determination to the requester, in the event part or all of the record is recommended for denial by the other agency, will cite the other agency Denying Official as well as the appropriate DOE Denying Official if a denial by DOE is also involved.

### § 1004.5 Processing requests for records.

(a) FOIA Officers will be responsible for processing requests for records submitted pursuant to this part. Upon receiving such a request, the FOIA Officer will, except as provided in paragraph (c) of this section, ascertain which Authorizing Official has responsibility for, custody of, or concern with the records requested. The FOIA Officer will review the request, consulting with the Authorizing Official where appropriate, to determine its compliance with §1004.4. Where a request complies with §1004.4, the FOIA Officer will acknowledge receipt of the request to the requester and forward the request to the Authorizing Official for action.

(b) The Authorizing Official will promptly identify and review the records encompassed by the request. The Authorizing Official or FOIA Officer will prepare a written response (1) granting the request, (2) denying the request, (3) granting/denying it in part, (4) replying with a response stating that the request has been referred to another agency under §1004.4(f) or §1004.6(e), (5) informing the requester that responsive records cannot be located or do not exist.

(c) Where a request involves records which are in the custody of or are the concern of more than one Authorizing Official or FOIA Officer, the FOIA Officer will identify all concerned all Authorizing Officials, send copies of the request to them and forward the request for action to the Authorizing Official or FOIA Officer that can reasonably be expected to have custody of most of the requested records. This Authorizing Official or FOIA Officer will prepare a DOE response to the requester consistent with paragraph (b) of this section, which will identify any other Authorizing Official or FOIA Officer, having responsibility for the denial of records.

(d) *Time for processing requests.* (1) Action pursuant to paragraph (b) of this section will be taken within 20 working days of receipt of a request for DOE records ("receipt" is defined in §1004.4(a)), except that,

(i) One request can be made to the requester for information and the DOE can toll the 20-day response period

[53 FR 15661, May 3, 1988, as amended at 79 FR 22853, Apr. 25, 2014]